

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of)	
)	
CAN-SPAM Act Rulemaking)	Project No. R411008
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COMMENTS OF SPRINT CORPORATION

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Sprint Corporation submits these Comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned matter concerning the Definitions, Implementation, and Reporting Requirements Under the CAN-SPAM Act. Sprint strongly supports the efforts of the Commission to limit unwanted electronic commercial messages. Sprint communicates with its customers via electronic messages, both email and mobile text message, and as a provider of a mobile wireless data network, Sprint has a keen interest in limiting unwanted commercial text messages to its customers and protecting its network. Sprint has actively participated in the CAN-SPAM Act proceeding before the Federal Communications Commission. However, as this Commission is given statutory authority to define “commercial” messages and “transactional or relationship” messages, Sprint requests that the Commission determine that certain electronic communications to existing customers are “transactional or relationship” messages. Specifically, Sprint requests that the Commission find that electronic communications to existing customers informing them of new products and services (related to the customers’ existing service) and those communications informing

existing customers of features and capabilities of their services are not “commercial” messages, but “transactional or relationship” messages. Alternatively, Sprint requests that the Commission modify the definition of “transactional or relationship” messages to more clearly include such messages to existing customers.

I. Messages to Existing Customers Regarding Services Offered by A Provider Should be Considered “Transactional or Relationship” Messages

Wireless carriers communicate with their subscribers to inform them of new or additional features, to explain features and capabilities of services to which they already subscribe, and to advise customers of service offerings that may save the consumer money or provide other consumer benefits – such as new, less expensive rate plans and equipment, or bundled services. These service-related, electronic communications may take the form of email or mobile text messages. It is Sprint’s experience that its customers appreciate receiving them. In fact, Sprint maintains an opt-out data base for customers not wishing to receive such electronic communications, and rarely do customers chose to exercise their opt-out option. The average opt-out rate for email messages is only 0.3%. Certainly, the vast majority of Sprint’s customers already view these types of service-related communications as relationship messages, as indicated by the extremely low opt-out rate.

Wireless carriers are in a unique position to their customers. Since they control the network and billing platforms for mobile text messages, wireless carriers typically do not bill customers for service-related text messages. The wireless industry is fiercely competitive, and especially with the advent of number portability, subscribers may easily switch providers if dissatisfied. Moreover, there is no incentive to bombard customers with email or text messages that would alienate them.

Bona fide senders of commercial electronic messages will comply with the CAN-SPAM Act. The CAN-SPAM Act was not intended to discourage legitimate communications between business and customers.¹ Again, it is Sprint's experience that its customers welcome communications advising of new products and service, explaining service features and capabilities, and offering money saving opportunities, such as new, lower rate plans. Only 3 out of 1000 Sprint customers opt-out.

Sprint believes that these service-related communications to existing customers may already fall within the definition of "transactional or relationship" messages. For example, such communications to existing customers could be considered as "an electronic mail message the primary purpose of which is . . . to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender."² Alternatively, such communications could be considered as "an electronic mail message the primary purpose of which is . . . to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender."³

In addition, as the Commission notes, "The Act does not specify that a 'transactional or relationship message' is one containing only transactional or relationship content."⁴ The Commission seems to recognize that service providers, such as Sprint, may send service-related, relationship-type messages that may not fall clearly within the CAN-SPAM Act definition of "transactional or relationship" messages. As already

¹ See NPRM at p. 18. See also Statement of Sen. Wyden, 149 Cong. Rec. S52008 (April 10, 2003).

² 15 USC 7702(17)(A)(i).

³ 15 USC 7702 (17)(A)(v).

⁴ NPRM, p. 19 (emphasis original).

described, these may include, for example, electronic communications reminding customers of services they have subscribed to, informing customers of service features and capabilities. They may also include information on new products and services that consumers find beneficial. Such electronic communications are customer-oriented, relationship messages that serve the customer. Stated another way, the primary purpose of these service-related messages – provided in conjunction with existing service – is that of a relationship message. .

Sprint agrees with the Commission that certain messages may contain both “transactional or relationship” information as well as “commercial” information, and that the dual purpose nature of the message does not by itself make the overall message “commercial.” The Commission should not, however, consider a message a dual purpose (commercial/transactional-relationship), if it contains information to an existing subscriber about new products or services within the family of services the customer already subscribes to, or if it explains features and capabilities of existing services. An important, consumer-oriented limitation is that the new product or service information must not contain information about third-party products and services, if the message is to be considered a “transactional or relationship” message. That protects the consumer from receiving third-party messages he may have already opted-out of receiving.

It may be suggested that because senders are permitted to send dual purpose messages (commercial/transactional-relationship), there is no need for the Commission to determine that the type of service-related communications described by Sprint are “transactional or relationship” messages. But, the requirements for determining whether a dual-purpose message is a “commercial” or “transactional or relationship” message are

particularly cumbersome for mobile text messaging. Under the Commission’s proposed rules, if the subject line is not determinative of the nature of the message, such dual-purpose messages are deemed to have a commercial primary purpose unless the transactional or relationship content appears at or near the beginning of the message. Mobile text messages are typically limited to 160 characters, requiring very direct and efficient communications. Requiring a specific order to such a small message can make it even more complicated to communicate directly. Moreover, given the character restrictions, it may be more efficient to break down the message into component parts which are sent separately – for example, account balance or remaining minutes of use in one text message, and information about the customer’s service capabilities in another.

Both senders and receivers of electronic messages would benefit from a Commission determination on the scope of the definition of “transactional or relationship” messages. If the Commission finds that the current definition of “transactional or relationship” messages does not clearly encompass the type of service-related, relationship communications to existing customers that Sprint has described, Sprint requests that the Commission modify the definition of “transactional or relationship” message. The CAN-SPAM Act expressly provides discretionary authority for the Commission to modify the definition of the term “transactional or relationship” message “to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices to accomplish the purpose of [the] Act.”⁵ As a protection to consumers, the Commission could make clear that the modification would not allow providers to send messages concerning products or services of third-parties, but only messages concerning the family of services the customer already subscribes to. This

⁵ 15 USC 7702(17)(B).

limitation would have the important effect of not negating customers' express intent not to receive messages from a third-party.

CONCLUSION

Sprint requests that the Commission find that electronic messages to an existing customer are “transactional or relationship” messages if they contains information about new products or services within the family of services the customer already subscribes to, or if the messages explain features and capabilities of existing services. Alternatively, Sprint requests that the Commission modify the definition of “transactional or relationship” messages to include such service-related electronic communications to existing customers.

Respectfully submitted,

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